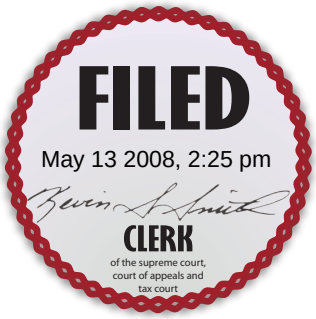

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IN THE
COURT OF APPEALS OF INDIANA

JIMMY MONROE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0709-CR-527
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0703-FA-043869

MAY 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Jimmy Monroe appeals his conviction of child molesting, a Class A felony. We affirm.

Monroe raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to support Monroe's conviction.

In 2003, Jason and Kimberly Evans were divorced, and Jason had visitation with his children, a nine-year-old son ("A.E.") and an older daughter, on Wednesdays and every other weekend. In 2005, Jason entered into a romantic relationship with Monroe and soon moved in with him. Jason worked evenings, and Monroe took care of the kids while Jason was at work.

On February 24, 2007, Jason was working, and Monroe was caring for the children. Sometime in the evening, Monroe and A.E. were downstairs watching television. A.E. was lying on the couch underneath a blanket and he was about to fall asleep. A.E.'s sister was in the computer room right across from the couch. When A.E. fell asleep, Monroe was on the other side of the couch. However, when A.E. woke up, Monroe was under the blanket and behind A.E. on the couch.

At the time A.E. fell asleep, he was wearing pajama pants, a short-sleeve t-shirt, and underwear. When A.E. awakened, his pants and underwear were around his ankles. Monroe's pants and underwear were also down to his ankles, and Monroe's penis was touching A.E. inside of his "rear end" and it hurt A.E. "a little bit." (Tr. at 28-29). A.E. felt Monroe moving the middle part of his body, and Monroe's penis was moving. A.E. said that Monroe told him, "Don't tell no one." *Id.* During this time, A.E.'s sister said that she saw the blanket "shuffling" for a couple of minutes before A.E. jumped off the

couch. When A.E. left the couch, his sister heard him say, "Stop!" (Tr. at 42). A.E. eventually told his sister about the incident and she reported the incident to her mother, who called the police and child protective services.

When questioned by police, Monroe gave various versions of what happened. He told police that he originally thought that it was Jason beside him and that he and Jason had engaged in sodomy on the couch at other times. Later, however, Monroe admitted that he knew it was A.E. beside him. The State charged Monroe with child molesting as a Class A felony, and a jury found him guilty as charged. Monroe was sentenced to a total of thirty years with twenty-five years executed.

Ind. Code § 35-42-4-3(a) provides that a person commits child molesting as a Class A felony when, with a child under fourteen years of age, he performs or submits to sexual intercourse or deviate sexual conduct. "Deviate sexual conduct" is defined as an act involving the sex organ of one person and the mouth or anus of another person. Ind. Code § 35-41-1-9. Monroe argues that although the State established an act involving Monroe's penis and A.E.'s buttocks, it failed to show that the act involved Monroe's penis and A.E.'s anus.

When reviewing the sufficiency of evidence to support a conviction, an appellate court considers only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Courts of review must be careful not to impinge on the fact-finder's authority to assess witness credibility and to weigh the evidence. *Id*. We will affirm the conviction unless "'no reasonable fact-finder

could find the elements of the crime proven beyond a reasonable doubt.'" *Id*. (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)).

As Monroe concedes, in order to show deviate sexual conduct involving the sexual organ of the defendant and the anus of the victim, the State is not required to show evidence of penetration. *Wisneskey v. State*, 736 N.E.2d 763, 764 (Ind. Ct. App. 2000); *Downey v. State*, 726 N.E.2d 794, 798 (Ind. Ct. App. 2000), *trans. denied*. Instead, the State need only establish that the defendant committed a sex act where there is contact with the anus. *Downey*, *id*.

The "anus" or "oral orifice" has been defined as "the lower opening of the digestive tract, lying in the fold between the nates [buttocks], through which fecal matter is extruded." *Id*. at 797 (citing *Stedman's Medical Dictionary* 95 (4th ed. 1976)). A.E., who was ten years old at the time of trial, testified that Monroe's "wiener" touched the inside of A.E.'s "rear end," which he described as being used "to go number two." (Tr. at 29). Similar testimony from a child has been found to be sufficient to support a jury's conclusion that there was contact with the anus. *See Riehle v. State*, 823 N.E.2d 287, 293 (Ind. Ct. App. 2005), *trans. denied* (where a ten-year-old girl testified that the defendant put "his peter in her butt" and described "butt" as "where you go poop out of").

Moreover, A.E. testified that Monroe's "wiener" felt hard at the time and that what Monroe was doing "hurt a little bit." (Tr. at 28). Again, similar testimony has been found sufficient to show involvement with the anus. *See Wisneskey*, 736 N.E.2d at 765 (holding that testimony that it "hurt" when the defendant stuck his penis in the victim's

"butt" was sufficient to allow the trier of fact to infer that the pain was a result of the child being sodomized).

Furthermore, Monroe gave various versions of what happened. He first admitted that he came "pretty close" to A.E.'s anus when he was "humping" him, and then that he "might have touched" A.E.'s anus. (Tr. at 175-77). The jury was free to believe the second admission.

Because of A.E.'s testimony and Monroe's admissions relating to the act, a jury could reasonably infer from the evidence that the act "involved" Monroe's penis and A.E.'s anus. Accordingly, the evidence is sufficient to sustain the conviction of child molesting as a Class A felony.

Affirmed.

VAIDIK, J., and BAILEY, J., concur.